

Appl. No. 09/780,804
Amdt. Dated March 7, 2005
Reply to Office Action of December 14, 2004

Attorney Docket No. 81841.0183
Customer No. 26021

REMARKS/ARGUMENTS:

Claims 11-20 are canceled without prejudice. Claims 1 and 21 are amended. Claims 1, 2, 4-10, and 21-30 are pending in the application. Reexamination and reconsideration of the application, as amended, are respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112:

Claims 1, 2, 4-10, and 21-30 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner states that support for the limitation of an alignment arm that limits movement of the blade to the longitudinal axis is not provided in the specification. The Applicant respectfully traverses this rejection.

Figures 2-5 depict an apparatus with a blade whose motion is restricted to linear motion along the longitudinal axis. The Figures depict a wash tower/wick holder 5 that restricts the movement of the blade along the longitudinal axis. The cutting blade 4 is driven down through the wash tower/wick holder 5 and cuts through the cap 9. (Applicant's specification, at page 7, lines 3-5). The carriage assembly 2 continues downward until the alignment arm 6 encounters the sample tube cap 9. At the cap detection point, the piercing portion of the downward stroke begins and the carriage assembly 2 separates from the alignment block 8 and the latch trigger 18 is released. (Applicant's specification, at page 6, lines 22-25). Therefore, based upon the Figures and the Applicant's specification, a person of ordinary skill in the art would realize that the movement of the blade is limited to linear motion along the longitudinal axis.

Furthermore, one of the major advantages that the present invention provides is that it prevents motion errors in the piercing process. (Applicant's

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specification, at page 1, lines 21-27; page 3, lines 17-22). Therefore, it naturally follows that movement of the blade should be limited to the direction of the piercing.

In light of the foregoing, the Applicant respectfully submits that claims 1, 2, 4-10, and 21-30 comply with the written description requirement. Withdrawal of this rejection is thus respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102:

Claims 1, 2, 4-7, 21-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Mater (U.S. Patent No. 3,598,393). The Applicant respectfully traverses this rejection.

Claim 1, as amended, is as follows:

An apparatus for piercing container caps, comprising:

- a) a piercing blade having a longitudinal axis and a zigzagged cross-section that is perpendicular to said axis;
- b) an alignment arm for moving said blade in a linear motion along said longitudinal axis to pierce a cap on a container, comprising a carriage assembly for moving said alignment arm, wherein movement of said blade is limited to linear motion along said longitudinal axis; and means for driving said carriage assembly.

The Examiner states that the drill bit is limited to longitudinal movement because it is surrounded by a bore and a guide bit. The Applicant respectfully disagrees. In the passage quoted by the Examiner, the Examiner acknowledges, "Mater not only relies on a rotation motion for drilling but also a linear motion to push the drill bit into the pole to make a hole through the entire length of the pole." The Applicant respectfully submits that the fact that Mater uses rotation motion

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means that movement is not limited to the longitudinal axis. However, in order to expedite the prosecution of the instant application, the Applicant amended claim 1 to indicate that the movement of the blade is limited to linear motion along the longitudinal axis.

Mater cannot render claim 1 obvious because Mater fails to teach or suggest that the movement of the blade is limited to linear motion along the blade's longitudinal axis. On the contrary, as acknowledged by the Examiner, Mater requires a rotation motion for drilling a drill bit into a pole. Thus, Mater teaches away from the present invention. It is a discovery of the present invention that the mechanical latch assembly provides reliability and consistency for the cap piercing cycles without utilizing or modifying any electronic components. It also provides more reliable obstruction detection and fewer motion errors. (Applicant's specification, at page 9, lines 7-9). The Z-shaped blade also cuts through the tube caps more easily and with less stretching of the elastomer, resulting in more consistent cut size and better venting. (Applicant's specification, at page 9, lines 4-6). Thus, by limiting the movement of the blade to the blade's longitudinal axis, motion errors and stretching of the cap elastomer is minimized.

In light of the foregoing, Applicant respectfully submits that Mater could not have anticipated or rendered obvious claim 1, because Mater fails to teach or suggest each and every claim limitation. Claims 2 and 4-7 depend from claim 1 and cannot be anticipated or rendered obvious for at least the same reasons as claim 1. Withdrawal of these rejections is thus respectfully requested.

Claims 21-27, likewise, have the limitation that the movement of the blade is limited to linear motion along the blade's longitudinal axis. Therefore, these claims are patentable over Mater for the same reasons discussed above. Withdrawal of these rejections is thus respectfully requested.

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CLAIM REJECTIONS UNDER 35 U.S.C. § 103:

Claims 10 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,598,393 to Mater.

Claims 10 and 30 depend from amended claims 1 and 21, respectively, and as such include all the limitations of claims 1 and 21, and therefore, cannot be rendered obvious over Mater for the same reasons discussed above. Withdrawal of this rejection is thus respectfully requested.

Claims 8, 9, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,598,393 to Mater in view of U.S. Patent No. 3,310,990 to Zettel or U.S. Patent No. 3,273,248 to Halverstadt or U.S. Patent No. 1,485,460 to Johnston.

Claims 8-9 and 28-29 depend from amended claims 1 and 21, respectively, and therefore, cannot be rendered obvious over Mater for the same reasons discussed above. Zettel, Halverstadt, and Johnston cannot remedy the defect of Mater and none of the three references are relied upon by the Examiner for such. Instead, the Examiner cites the three references for teaching the use of gear rack teeth or saw teeth to securely hold two structures together.

In light of the foregoing, Applicant respectfully submits that the cited references could not have made claims 8-9 and 28-29 obvious, because the combination of references fails to teach or suggest each and every claim limitation. Withdrawal of this rejection is thus respectfully requested.

Applicant believes the foregoing amendments comply with requirements of form and thus may be admitted under 37 C.F.R. § 1.116(b). In addition, admission is requested under 37 C.F.R. § 1.116(b) as presenting rejected claims in better form for consideration on appeal.

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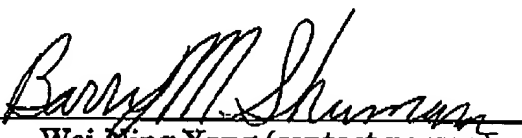
In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Reexamination and reconsideration of the application, as amended, are requested.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (213) 337-6700 to discuss the steps necessary for placing the application in condition for allowance.

If there are any fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-1314.

Respectfully submitted,
HOGAN & HARTSON L.L.P.

Date: March 7, 2005

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